

10/825,483

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: METZGER ET AL. Examiner: U. HO  
Serial No.: 10/825,483 Group Art Unit: 3731  
Filed: APRIL 14, 2004 Docket No.: 13033.5USC1  
Title: STIFFENING PHARYNGEAL WALL TREATMENT

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CERTIFICATE UNDER 37 CFR 1.8:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 November 15, 2006.

By: *Elizabeth Tauer*  
Name: Elizabeth Tauer

TERMINAL DISCLAIMER TO OBLIGATE  
A DOUBLE PATENTING REJECTION

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

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Dear Sir:

Petitioner, Restore Medical, Inc., a corporation organized and existing under the laws of the State of Minnesota and having its primary place of business at 2800 Patton Road, St. Paul, Minnesota 55113, in the county of Ramsey, and the state of Minnesota represents that it is the owner of the entire right, title and interest in U.S. Patent Application Serial No. 10/825,483, filed on April 14, 2004 and entitled STIFFENING PHARYNGEAL WALL TREATMENT, by virtue of our assignment recorded at Reel 013706, Frame(s) 0220.

Petitioner, Restore Medical, Inc., hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory term of U.S. Patent Nos. 6,513,530 and 6,250,307 and hereby agrees that any patent so granted on the above-identified

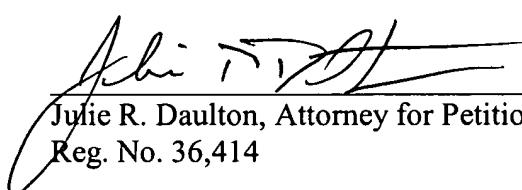
application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent Nos. 6,513,530 and 6,250,307, this agreement to run with any patent granted on the above-identified application and to be binding upon the grantee, its successors, or assigns.

In making the above disclaimer, Petitioner does not disclaim the terminal part of any patent granted on the above-identified application that would extend to the full statutory term as presently shortened by any terminal disclaimer of United States Patent Nos. 6,513,530 and 6,250,307, in the event that United States Patent Nos. 6,513,530 and 6,250,307 expire for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321(a), has all claims cancelled by a reexamination certification, or is otherwise terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer, except for the separation of legal title stated above.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

The undersigned is an attorney or agent of record.

Date: 15 November 2006

  
Julie R. Daulton, Attorney for Petitioner  
Reg. No. 36,414